

# **EXHIBIT A**

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HUMAN  
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 WATCH

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March 22, 2018

*U.S. Army Freedom of Information Office*

Casey Building, Suite 150

ATTN: AAHS-RDF

7701 Telegraph Road

Alexandria, VA 22315-3905

Re: FOIA Request

Dear FOIA Officer,

This Freedom of Information Act is submitted on behalf of Human Rights Watch which seeks the following:

Any records<sup>1</sup> produced or held by the U.S. Army to the alleged mistreatment or injury of detainees held by US military forces in Afghanistan, including those held in shared custody with Afghan authorities, from September 11, 2001 until the date of this request, including the following:

a. Any command-initiated investigations, including investigations conducted under Army Reg 15-6 or other authority;

b. Any injury reports in which the injured person was a detainee;

c. Any reports of offense, including but not limited to DD Forms 458 and 1569;

d. Any investigation conducted pursuant to Article 32, UCMJ;

e. Any report of an investigation conducted by any Inspector General;

f. Any record of non-judicial punishment, to include proceedings in which the charges were dismissed;

g. Any charge sheets preferred under the UCMJ;

h. All trial records of summary courts-martial, special courts-martial, and general courts-martial, to include any allied papers, appellate briefs, and decisions;<sup>2</sup>

<sup>1</sup> Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, instant messages, text messages, or manuals.

<sup>2</sup> The US government reported that the US Department of Defense had conducted thousands of investigations into detainee abuse and disciplined hundreds of service members. For example, the report stated: "more than 70 investigations concerning allegations of detainee abuse in Afghanistan conducted by the Department [of Defense] resulted in trial by courts-martial, close to 200 investigations of detainee abuse resulted in either non-judicial punishment or adverse administrative action, and many more were investigated and resulted in action at a lower level. ..." See US State Department, "One-Year Follow-up Response of the United States of America to Recommendations of the Committee Against Torture on its Combined Third to Fifth Periodic Reports," para. 31, November 27, 2015, <http://www.state.gov/j/drl/rls/250342.htm> (accessed February 19, 2018). The report also stated that "[a]ll courts-martial are a matter of public record." Ibid, para. 21. The report also stated that

- i. Any and all General Officer Memoranda of Reprimand (GOMOR) issued, with any submissions by any recipients of the Memoranda, both before and after the Memorandum was issued;
- j. All documents relating to grade determinations based on misconduct or dereliction;
- k. Any action to remove a Military Occupational Specialty (MOS) or other special certification or designator;
- l. Any administrative reduction in rank;
- m. Any correspondence relating to the release or detachment for cause of any commander;
- n. Any administrative separation proceedings instituted, regardless of outcome;
- o. Any application submitted to a Board for Correction of Military or Naval Records relating to adverse action taken based on treatment of detainees, and any judicial review proceedings or administrative proceedings with respect to the decision of these boards;
- p. Any correspondence between the United States and any official of the Afghan government about the treatment of detainees;
- q. All documents relating to any investigations conducted in response to claims submitted by detainees or their families, and records of any *ex gratia* or other payments to detainees or their families;
- r. All the Department of Defense Office of Inspector General claims service records relating to the treatment of detainees;
- s. All claims submitted under the Military Claims Act, Foreign Claims Act, and Federal Tort Claims Act against the United States government;
- t. To the extent not produced in response to the above requests, all other administrative investigations, hearings, and documents resulting in either an adverse administrative action or a "no action" determination by military officials.

### **Request for a Public Interest Fee Waiver**

A waiver or reduction of search and review fees is requested. This FOIA request is being filed pursuant to Human Rights Watch's mission as a research and advocacy entity and representative of the news media within the meaning of 5 U.S.C. § 552(a)(4)(A)(ii)(II).

#### *I. Human Rights Watch is an advocacy organization*

Human Rights Watch is a non-profit 501(c)(3) organization that seeks to advance human rights around the world. Dissemination of information about government activities, particularly with respect to military detentions, is a critical and substantial component of Human Rights Watch's mission and work. Any information obtained through this request will be disseminated to the public at no cost for the purpose of educating the public and promoting the protection of civil liberties and human rights.

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"[a]ll courts-martial are a matter of public record." *Ibid.* at para.21. Except with respect to classified information, courts-martial are public and records of trial are subject to mandatory release under FOIA. 5 U.S.C.A. § 552 (2012).

Human Rights Watch is entitled to a fee waiver because “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The US military’s mistreatment of detainees in Afghanistan and lack of accountability for this abuse is a matter of great public interest and concern. Very little information on investigations into this abuse is publicly available. Further, the requested records will lead to a greater public understanding about the extent of the mistreatment in Afghanistan and how the US has investigated, punished and prosecuted the abuse in both judicial or non-judicial forums.<sup>3</sup>

## *II. Human Rights Watch is a member of the news media*

Human Rights Watch also qualifies as a representative of the news media because it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Cause of Action v. FTC*, 79 F.3d 1108 (D.C. Cir. 2015); *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Every year, Human Rights Watch produces hundreds of reports, articles, policy papers, and multi-media pieces documenting human rights concerns and violations around the world and publishes them on its website: <https://www.hrw.org/>. It has issued multiple reports on alleged human rights violations in Afghanistan by members of the US military and the CIA.<sup>4</sup> Human Rights Watch’s publications have no commercial purpose, and the records sought in this request are not intended for commercial use. Human Rights Watch is therefore entitled to a reduction of fees. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

For these reasons, Human Rights Watch requests that all fees related to the search, review, and duplication of the requested records be waived. However, in the event that duplication fees are not waived, Human Rights Watch is willing to review the requested records

<sup>3</sup> See, e.g., The Editorial Board, “Abuse in Secret,” *Washington Post*, March 5, 2005, (accessed March 9, 2018), <http://www.washingtonpost.com/wp-dyn/articles/A8746-2005Mar4.html>; The Editorial Board, “Prosecute Torturers and their Bosses,” *New York Times*, December 21, 2014, (accessed March 9, 2018), <http://www.nytimes.com/2014/12/22/opinion/prosecute-torturers-and-their-bosses.html> (accessed March 20, 2018).

<sup>4</sup> See, e.g., Human Rights Watch, *Afghanistan and the International Criminal Court*, November 2017, <http://www.hrw.org/news/2017/11/20/afghanistan-and-international-criminal-court>; Human Rights Watch, *Afghanistan: Killing and Torture by U.S. Predate Abu Ghraib*, May 2005, <http://www.hrw.org/news/2005/05/20/afghanistan-killing-and-torture-us-predicate-abu-ghraib>; Human Rights Watch, *Enduring Freedom: Abuses by U.S. Forces in Afghanistan*, March 2004, <http://www.hrw.org/report/2004/03/07/enduring-freedom/abuses-us-forces-afghanistan>; Human Rights Watch, *US: Ex-Detainees Describe Unreported CIA Torture*, October 2016, <http://www.hrw.org/news/2016/10/03/us-ex-detainees-describe-unreported-cia-torture>; Human Rights Watch, *U.S.: Systemic Abuse of Afghan Prisoners*, May 13, 2004, <http://www.hrw.org/news/2004/05/13/us-systemic-abuse-afghan-prisoners>; Human Rights Watch, *Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi’s Libya*, September 5, 2012, <https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya>; Human Rights Watch, *No More Excuses: A Roadmap to Justice for CIA Torture*, December 1, 2015, <https://www.hrw.org/report/2015/12/01/no-more-excuses/roadmap-justice-cia-torture>. Human Rights Watch, *Getting Away with Torture: The Bush Administration and Mistreatment of Detainees*, July 12, 2011, <https://www.hrw.org/report/2011/07/12/getting-away-torture/bush-administration-and-mistreatment-detainees>.

on site. If the search and review fees will not be waived, please contact me at the below email address if the fees are estimated to exceed \$100.

### Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 286.8, Human Rights Watch requests expedited processing for this request because of a compelling need about a federal government activity—the alleged abuse of detainees in US military custody in Afghanistan and the US’s investigation and punishment of such abuse. Despite claims to the contrary, the US government has not made public information sufficient to determine whether the US has adequately investigated and punished US military detainee abuses, as it has claimed.<sup>5</sup>

This request is urgent in light of the broad public interest in the US military’s treatment of detainees in Afghanistan and the recent request by the prosecutor for the International Criminal Court to open an investigation in Afghanistan. This investigation would include allegations of detainee abuse on the part of US military forces.<sup>6</sup> If granted, part of the ICC investigation will include an assessment of whether the US government has thoroughly and sufficiently investigated alleged US military detainee abuse as it claims.<sup>7</sup> Many victims of the alleged abuse carried out by US forces are reportedly unaware of the ICC investigation into this issue and have had difficulty reporting their abuses to the court.<sup>8</sup> Human Rights Watch plans to conduct advocacy around this issue and assist victims in reporting the abuse when it is able. Knowing what abuses the US has investigated and whether the investigations have been adequately conducted will be essential to these efforts. The information sought is also relevant to US public concern about whether there has been adequate accountability for US detainees abuse as well.<sup>9</sup>

I certify that the information above is true and correct to the best of my knowledge, pursuant to 5 U.S.C. § 552(a)(6)(E)(vi) and 32 C.F.R. § 286.8(e).

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<sup>5</sup> See note 2 above.

<sup>6</sup> Office of the Prosecutor, International Criminal Court, “Situation in the Islamic Republic of Afghanistan: Request for Authorization of an Investigation Pursuant to Article 15,” November 20, 2017, (accessed March 9, 2018), [http://www.icc-cpi.int/CourtRecords/CR2017\\_06891.PDF](http://www.icc-cpi.int/CourtRecords/CR2017_06891.PDF) (accessed March 9, 2018); see also Sune Engel Rasmussen and Owen Bowcott, “Prosecutor Seeks to Investigate Afghan War Crimes Allegations—and Claims of US Torture,” *The Guardian*, November 3, 2017, (accessed March 9, 2018), <http://www.theguardian.com/world/2017/nov/03/war-crimes-prosecutor-seeks-investigation-into-afghan-conflict-icc-us-force-cia-taliban>; James McAuley and Pamela Constable, “ICC Seeks Investigation into War Crimes in Afghanistan Since 2003,” *Washington Post*, November 3, 2017, (accessed March 9, 2018), [http://www.washingtonpost.com/world/icc-seeks-investigation-into-war-crimes-in-afghanistan-since-2003/2017/11/03/90c388da-c09e-11e7-9294-705f80164f6e\\_story.html](http://www.washingtonpost.com/world/icc-seeks-investigation-into-war-crimes-in-afghanistan-since-2003/2017/11/03/90c388da-c09e-11e7-9294-705f80164f6e_story.html).

<sup>7</sup> *Ibid.*

<sup>8</sup> See “Final Consolidated Registry Report on Victims’ Representations Pursuant to the Pre-Trial Chamber’s Order ICC-02/17-6 of 9 November 2017,” Annex I, International Criminal Court, ICC-02/17-29, February 20, 2018, [https://www.icc-cpi.int/RelatedRecords/CR2018\\_01452.PDF](https://www.icc-cpi.int/RelatedRecords/CR2018_01452.PDF), paras. 12-14 and 46.

<sup>9</sup> See, e.g., The Editorial Board, “Abuse in Secret,” *Washington Post*; The Editorial Board, “Prosecute Torturers and their Bosses,” *New York Times*.

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We request that responsive records be provided electronically in their native file format, if possible. See 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in text-searchable PDF, in the best image quality in the U.S. Army's possession, and in separate, Bates-stamped files.

We further request that you provide an estimated date on which you will finish processing this request. See 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please justify all denials by reference to the specific exemptions of the Act, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any responsive documents are classified, please identify those documents, including a date and document number, so I may request a Mandatory Declassification Review ("MDR") under Executive Order 13,526.

Thank you for your attention to this request in accordance with the statutory deadline. If you have any questions, please contact me at the below email address.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Pitter", with a stylized, cursive script.

Laura Pitter  
Senior National Security Counsel  
pitterl@hrw.org

# **EXHIBIT B**

Human Rights Watch  
350 Fifth Avenue, 34th Floor  
New York, NY 10118-3299  
Tel: +1-212-290-4700  
Fax: +1-212-736-1300; 917-591-3452

October 24, 2018

U.S. Air Force Freedom of Information Office  
Headquarters Air Force/AAIL (FOIA)  
1000 Air Force Pentagon  
Washington, DC 20330-1000

Re: FOIA Request

Dear FOIA Officer,

This Freedom of Information Act is submitted on behalf of Human Rights Watch which seeks the following:

Any records<sup>1</sup> produced or held by the United States Air Force relating to the alleged mistreatment or injury of detainees held by US military forces in Afghanistan, including those held in shared custody with Afghan authorities, from September 11, 2001 until the date of this request, including the following:

- a. Any command-initiated investigations, including investigations conducted under Army Reg 15-6 or other authority;
- b. Any injury reports in which the injured person was a detainee;
- c. Any reports of offense, including but not limited to DD Forms 458 and 1569;
- d. Any investigation conducted pursuant to Article 32, UCMJ;
- e. Any report of an investigation conducted by any Inspector General;
- f. Any record of non-judicial punishment, to include proceedings in which the charges were dismissed;
- g. Any charge sheets preferred under the UCMJ;
- h. All trial records of summary courts-martial, special courts-martial, and general courts-martial, to include any allied papers, appellate briefs, and decisions;<sup>2</sup>

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<sup>1</sup> Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, instant messages, text messages, or manuals.

<sup>2</sup> The US government reported that the US Department of Defense had conducted thousands of investigations into detainee abuse and disciplined hundreds of service members. For example, the report stated: “more than 70 investigations concerning allegations of detainee abuse in Afghanistan conducted by the Department [of Defense] resulted in trial by courts-martial, close to 200 investigations of detainee abuse resulted in either non-judicial punishment or adverse administrative action, and many more were investigated and resulted in action at a lower level. ...” See US State Department, “One-Year Follow-up Response of the United States of America to Recommendations of the Committee Against Torture on its Combined Third to Fifth Periodic Reports,” para. 31, November 27, 2015, <http://www.state.gov/j/drl/rls/250342.htm> (accessed February 19, 2018). The report also stated that “[a]ll courts-martial are a matter of public record.” Ibid, para.



- i. Any and all General Officer Memoranda of Reprimand (GOMOR) issued, with any submissions by any recipients of the Memoranda, both before and after the Memorandum was issued;
- j. All documents relating to grade determinations based on misconduct or dereliction;
- k. Any action to remove a Military Occupational Specialty (MOS) or other special certification or designator;
- l. Any administrative reduction in rank;
- m. Any correspondence relating to the release or detachment for cause of any commander;
- n. Any administrative separation proceedings instituted, regardless of outcome;
- o. Any application submitted to a Board for Correction of Military or Naval Records relating to adverse action taken based on treatment of detainees, and any judicial review proceedings or administrative proceedings with respect to the decision of these boards;
- p. Any correspondence between the United States and any official of the Afghan government about the treatment of detainees;
- q. All documents relating to any investigations conducted in response to claims submitted by detainees or their families, and records of any *ex gratia* or other payments to detainees or their families;
- r. All United States Air Force claims service records relating to the treatment of detainees;
- s. All claims submitted under the Military Claims Act, Foreign Claims Act, and Federal Tort Claims Act against the United States government;
- t. To the extent not produced in response to the above requests, all other administrative investigations, hearings, and documents resulting in either an adverse administrative action or a “no action” determination by military officials.

### **Request for a Public Interest Fee Waiver**

A waiver or reduction of search and review fees is requested. This FOIA request is being filed pursuant to Human Rights Watch’s mission as a research and advocacy entity and representative of the news media within the meaning of 5 U.S.C. § 552(a)(4)(A)(ii)(II).

#### *I. Human Rights Watch is an advocacy organization*

Human Rights Watch is a non-profit 501(c)(3) organization that seeks to advance human rights around the world. Dissemination of information about government activities, particularly with respect to military detentions, is a critical and substantial component of Human Rights Watch’s mission and work. Any information obtained through this request will be disseminated to the public at no cost for the purpose of educating the public and promoting the protection of civil liberties and human rights.

Human Rights Watch is entitled to a fee waiver because “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The US military’s mistreatment of detainees in Afghanistan and lack of accountability for this abuse is a matter of great public interest and concern. Very little

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21. The report also stated that “[a]ll courts-martial are a matter of public record.” *Ibid.* at para.21. Except with respect to classified information, courts-martial are public and records of trial are subject to mandatory release under FOIA. 5 U.S.C.A. § 552 (2012).

information on investigations into this abuse is publicly available. Further, the requested records will lead to a greater public understanding about the extent of the mistreatment in Afghanistan and how the US has investigated, punished and prosecuted the abuse in both judicial or non-judicial forums.<sup>3</sup>

## *II. Human Rights Watch is a member of the news media*

Human Rights Watch also qualifies as a representative of the news media because it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Cause of Action v. FTC*, 79 F.3d 1108 (D.C. Cir. 2015); *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Every year, Human Rights Watch produces hundreds of reports, articles, policy papers, and multi-media pieces documenting human rights concerns and violations around the world and publishes them on its website: <https://www.hrw.org/>. It has issued multiple reports on alleged human rights violations in Afghanistan by members of the US military and the CIA.<sup>4</sup> Human Rights Watch’s publications have no commercial purpose, and the records sought in this request are not intended for commercial use. Human Rights Watch is therefore entitled to a reduction of fees. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

For these reasons, Human Rights Watch requests that all fees related to the search, review, and duplication of the requested records be waived. However, in the event that duplication fees are not waived, Human Rights Watch is willing to review the requested records on site. If the search and review fees will not be waived, please contact me at the below email address if the fees are estimated to exceed \$100.

## **Application for Expedited Processing**

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<sup>3</sup> See, e.g., The Editorial Board, “Abuse in Secret,” *Washington Post*, March 5, 2005, (accessed March 9, 2018), <http://www.washingtonpost.com/wp-dyn/articles/A8746-2005Mar4.html>; The Editorial Board, “Prosecute Torturers and their Bosses,” *New York Times*, December 21, 2014, (accessed March 9, 2018), <http://www.nytimes.com/2014/12/22/opinion/prosecute-torturers-and-their-bosses.html> (accessed March 20, 2018).

<sup>4</sup> See, e.g., Human Rights Watch, *Afghanistan and the International Criminal Court*, November 2017, <http://www.hrw.org/news/2017/11/20/afghanistan-and-international-criminal-court>; Human Rights Watch, *Afghanistan: Killing and Torture by U.S. Predate Abu Ghraib*, May 2005, <http://www.hrw.org/news/2005/05/20/afghanistan-killing-and-torture-us-predicate-abu-ghraib>; Human Rights Watch, *Enduring Freedom: Abuses by U.S. Forces in Afghanistan*, March 2004, <http://www.hrw.org/report/2004/03/07/enduring-freedom/abuses-us-forces-afghanistan>; Human Rights Watch, *US: Ex-Detainees Describe Unreported CIA Torture*, October. 2016, <http://www.hrw.org/news/2016/10/03/us-ex-detainees-describe-unreported-cia-torture>; Human Rights Watch, *U.S.: Systemic Abuse of Afghan Prisoners*, May 13, 2004, <http://www.hrw.org/news/2004/05/13/us-systemic-abuse-afghan-prisoners>; Human Rights Watch, *Delivered into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi’s Libya*, September 5, 2012, <https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya>; Human Rights Watch, *No More Excuses: A Roadmap to Justice for CIA Torture*, December 1, 2015, <https://www.hrw.org/report/2015/12/01/no-more-excuses/roadmap-justice-cia-torture>. Human Rights Watch, *Getting Away with Torture: The Bush Administration and Mistreatment of Detainees*, July 12, 2011, <https://www.hrw.org/report/2011/07/12/getting-away-torture/bush-administration-and-mistreatment-detainees>.

Pursuant to 5 U.S.C. § 552(a)(6)(E), Human Rights Watch requests expedited processing for this request because of a compelling need about a federal government activity—the alleged abuse of detainees in US military custody in Afghanistan and the US’s investigation and punishment of such abuse. Despite claims to the contrary, the US government has not made public information sufficient to determine whether the US has adequately investigated and punished US military detainee abuses, as it has claimed.<sup>5</sup>

This request is urgent in light of the broad public interest in the US military’s treatment of detainees in Afghanistan and the recent request by the prosecutor for the International Criminal Court to open an investigation in Afghanistan. This investigation would include allegations of detainee abuse on the part of US military forces.<sup>6</sup> If granted, part of the ICC investigation will include an assessment of whether the US government has thoroughly and sufficiently investigated alleged US military detainee abuse as it claims.<sup>7</sup> Many victims of the alleged abuse carried out by US forces are reportedly unaware of the ICC investigation into this issue and have had difficulty reporting their abuses to the court.<sup>8</sup> Human Rights Watch plans to conduct advocacy around this issue and assist victims in reporting the abuse when it is able. Knowing what abuses the US has investigated and whether the investigations have been adequately conducted will be essential to these efforts. The public concern about this investigation has only grown after National Security Adviser John Bolton’s recent remarks about the ICC.<sup>9</sup> The information sought is also relevant to US public concern about whether there has been adequate accountability for US detainees abuse as well.<sup>10</sup>

I certify that the information above is true and correct to the best of my knowledge, pursuant to 5 U.S.C. § 552(a)(6)(E)(vi).

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We request that responsive records be provided electronically in their native file format, if possible. See 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided

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<sup>5</sup> See note 2 above.

<sup>6</sup> Office of the Prosecutor, International Criminal Court, “Situation in the Islamic Republic of Afghanistan: Request for Authorization of an Investigation Pursuant to Article 15,” November 20, 2017, (accessed March 9, 2018), [http://www.icc-cpi.int/CourtRecords/CR2017\\_06891.PDF](http://www.icc-cpi.int/CourtRecords/CR2017_06891.PDF) (accessed March 9, 2018); see also Sune Engel Rasmussen and Owen Bowcott, “Prosecutor Seeks to Investigate Afghan War Crimes Allegations—and Claims of US Torture,” *The Guardian*, November 3, 2017, (accessed March 9, 2018), <http://www.theguardian.com/world/2017/nov/03/war-crimes-prosecutor-seeks-investigation-into-afghan-conflict-icc-us-force-cia-taliban>; James McAuley and Pamela Constable, “ICC Seeks Investigation into War Crimes in Afghanistan Since 2003,” *Washington Post*, November 3, 2017, (accessed March 9, 2018), [http://www.washingtonpost.com/world/icc-seeks-investigation-into-war-crimes-in-afghanistan-since-2003/2017/11/03/90c388da-c09e-11e7-9294-705f80164f6e\\_story.html](http://www.washingtonpost.com/world/icc-seeks-investigation-into-war-crimes-in-afghanistan-since-2003/2017/11/03/90c388da-c09e-11e7-9294-705f80164f6e_story.html).

<sup>7</sup> *Ibid.*

<sup>8</sup> See “Final Consolidated Registry Report on Victims’ Representations Pursuant to the Pre-Trial Chamber’s Order ICC-02/17-6 of 9 November 2017,” Annex I, International Criminal Court, ICC-02/17-29, February 20, 2018, [https://www.icc-cpi.int/RelatedRecords/CR2018\\_01452.PDF](https://www.icc-cpi.int/RelatedRecords/CR2018_01452.PDF), paras. 12-14 and 46.

<sup>9</sup> See John Bolton, National Security Adviser, “Protecting American Constitutionalism and Sovereignty from International Threats” (Sept. 10, 2018), <https://www.lawfareblog.com/national-security-adviser-john-bolton-remarks-federalist-society> (accessed Oct. 17, 2018).

<sup>10</sup> See, e.g., The Editorial Board, “Abuse in Secret,” *Washington Post*; The Editorial Board, “Prosecute Torturers and their Bosses,” *New York Times*.

electronically in text-searchable PDF, in the best image quality in the United States Air Force's possession, and in separate, Bates-stamped files.

We further request that you provide an estimated date on which you will finish processing this request. See 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please justify all denials by reference to the specific exemptions of the Act, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any responsive documents are classified, please identify those documents, including a date and document number, so I may request a Mandatory Declassification Review ("MDR") under Executive Order 13,526.

Thank you for your attention to this request in accordance with the statutory deadline. If you have any questions, please contact me at the below email address.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Pitter". The signature is fluid and cursive, with the first name "Laura" being more prominent than the last name "Pitter".

Laura Pitter  
Interim Deputy Director, US Program  
pitterl@hrw.org

# **EXHIBIT C**



ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

## Yale Law School

### **FREEDOM OF INFORMATION ACT APPEAL**

July 31, 2018

#### **VIA MAIL**

Secretary of the Army  
ATTN: Office of the General Counsel  
Room 3C546  
104 Army Pentagon  
Washington, DC 20310-0104

Re: Appeal of FOIA Request No. FA 18-0852 / FP 18-013980 (USARCS Response)

Dear Sir or Madam:

This letter constitutes an administrative appeal under the federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of Human Rights Watch ("HRW") to the Department of the Army (Army) regarding Human Rights Watch's March 22, 2018, request seeking records relating to the alleged mistreatment or injury of detainees by military forces in Afghanistan, including those held in shared custody with Afghan authorities, from September 11, 2001, until present. We challenge the adequacy of the agency's search for responsive records.

#### **History of Human Rights Watch's Request**

On March 22, 2018, Human Rights Watch submitted a FOIA request to the U.S. Army Freedom of Information Office via e-mail. The request sought information related to the alleged mistreatment or injury of detainees held by US military forces in Afghanistan. Specifically, the request sought any records<sup>1</sup> produced or held by the U.S. Army related to the alleged mistreatment or injury of detainees held by US military forces in Afghanistan, including those held in shared custody with Afghan authorities, from September 11, 2001 until the date of this request, including the following:

- a. Any command-initiated investigations, including investigations conducted under Army Reg 15-6 or other authority;
- b. Any injury reports in which the injured person was a detainee;

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<sup>1</sup> The request noted that "[r]ecords include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, instant messages, text messages, or manuals."



- c. Any reports of offense, including but not limited to DD Forms 458 and 1569;
- d. Any investigation conducted pursuant to Article 32, UCMJ;
- e. Any report of an investigation conducted by any Inspector General;
- f. Any record of non-judicial punishment, to include proceedings in which the charges were dismissed;
- g. Any charge sheets preferred under the UCMJ;
- h. All trial records of summary courts-martial, special courts-martial, and general courts-martial, to include any allied papers, appellate briefs, and decisions;
- i. Any and all General Officer Memoranda of Reprimand (GOMOR) issued, with any submissions by any recipients of the Memoranda, both before and after the Memorandum was issued;
- j. All documents relating to grade determinations based on misconduct or dereliction;
- k. Any action to remove a Military Occupational Specialty (MOS) or other special certification or designator;
- l. Any administrative reduction in rank;
- m. Any correspondence relating to the release or detachment for cause of any commander;
- n. Any administrative separation proceedings instituted, regardless of outcome;
- o. Any application submitted to a Board for Correction of Military or Naval Records relating to adverse action taken based on treatment of detainees, and any judicial review proceedings or administrative proceedings with respect to the decision of these boards;
- p. Any correspondence between the United States and any official of the Afghan government about the treatment of detainees;
- q. All documents relating to any investigations conducted in response to claims submitted by detainees or their families, and records of any ex gratia or other payments to detainees or their families;
- r. All the Department of Defense Office of Inspector General claims service records relating to the treatment of detainees;





- s. All claims submitted under the Military Claims Act, Foreign Claims Act, and Federal Tort Claims Act against the United States government;
- t. To the extent not produced in response to the above requests, all other administrative investigations, hearings, and documents resulting in either an adverse administrative action or a “no action” determination by military officials.

In its April 3, 2018, response to this request, the Department of the Army’s FOIA Office advised that it “serves as the referral point and policy office for the Department of the Army Freedom of Information Act and Privacy Act entities.” It further advised that our request had been forwarded to, among others, the Office of the Judge Advocate General (“JAG”).

On May 2, 2018, we received separate written responses from JAG’s International and Operational Law Division (“IOLD”) and from JAG’s U.S. Army Claims Service (“USARCS”). In its response, USARCS stated that “[t]he relevant portions of your request to this organization . . . are included in paragraphs q and s. Our search of USARCS records failed to identify any records in our files that would respond to your request.” The response provided no additional details about how the search was conducted or which records were searched. Additionally, the request’s status was marked as “closed” on the case status page of the Army FOIA website, though the response letter never stated that the determination was final.

**Basis for Appeal: The Army has failed to conduct an adequate search for responsive records**

Pursuant to FOIA, the Army is obligated to conduct a search for all records responsive to the request. 5 U.S.C. § 552(a)(3); *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) (“[T]he agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.”). An agency “cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” *Oglesby*, 920 F.2d at 68. FOIA requires the Army to “search all locations ‘likely’ to contain” responsive records. *DiBacco v. U.S. Army*, 795 F.3d 178, 190 (D.C. Cir. 2015); *see also Ancient Coin Collectors Guild v. United States Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (“An agency is required to perform more than a perfunctory search in response to a FOIA request.”).

To conduct an adequate search, an agency must search all offices or departments within the agency where it should know responsive records might be found. In *Natural Res. Def. Council v. Dep’t of Def.*, 388 F. Supp. 2d 1086 (C.D. Cal. 2005), the court held that the agency had improperly limited its search to the Office of the Secretary of Defense. The court found that, when “the requester clearly states that he wants all agency records on a subject, i.e., regardless of their location,” an agency is obligated to follow any “lead that is both clear and certain” when searching for responsive records. *Nat’l Res. Def. Council v. U.S. Dep’t of Def.*, 388 F. Supp. 2d 1086, 1102 (C.D. Cal. 2005) (citing *Kowalczyk v. Dep’t of Justice*, 73 F.3d 386, 389 (D.C. Cir.





1996)). Here, if IOLD and USARCS found no responsive records, JAG ought to have had clear and certain leads as to where records of the relevant investigations might be located.

Moreover, publicly-available information, including statements from the US government, make clear that JAG could not have conducted an adequate search. As HRW noted in its FOIA request, the U.S. government has reported that the U.S. Department of Defense has conducted thousands of investigations into detainee abuse and disciplined hundreds of service members. According to a November 27, 2015, government report, “more than 70 investigations concerning allegations of detainee abuse in Afghanistan conducted by the Department [of Defense] resulted in trial by courts-martial, close to 200 investigations of detainee abuse resulted in either non-judicial punishment or adverse administrative action, and many more were investigated and resulted in action at a lower level.”<sup>2</sup> JAG’s failure to locate any records relevant to hundreds of disciplinary proceedings and dozens of courts-martial concerning abuse of detainees in Afghanistan makes clear that the agency has not conducted an adequate search. The agency either transferred HRW’s request to the wrong components, or IOLD and USCARCS failed to adequately search their records.

Furthermore, IOLD and USARCS’s responses fail to justify the search it did conduct. First, the Army has provided no explanation of why it has limited its search to JAG and the other subdivisions within the Army to which it referred our request. We therefore cannot know if responsive records may be in the possession of some other office or department within the Army. Second, JAG itself has provided no explanation for how and why it decided that it would only have IOLD and USARCS search for responsive documents. Third, USARCS has not provided any information about where and how it conducted its search for responsive records.

Pursuant to the requirements of FOIA, we request a response to this appeal within twenty (20) working days.

Very truly yours,

Charles Crain  
Media Freedom & Information Access Clinic  
Yale Law School  
P.O. Box 208215  
New Haven, CT 06520-8215  
(203) 436-5824  
charles.crain@ylsclinics.org  
*Counsel for Human Rights Watch*

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<sup>2</sup> See US State Department, “One-Year Follow-up Response of the United States of America to Recommendations of the Committee Against Torture on its Combined Third to Fifth Periodic Reports,” para. 31, November 27, 2015, <https://www.state.gov/j/drl/rls/250342.htm> (accessed July 27, 2018).



ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

## Yale Law School

### **FREEDOM OF INFORMATION ACT APPEAL**

July 31, 2018

#### **VIA MAIL**

Secretary of the Army  
ATTN: Office of the General Counsel  
Room 3C546  
104 Army Pentagon  
Washington, DC 20310-0104

Re: Appeal of FOIA Request No. FA 18-0852 / FP 18-013980 (IOLD Response)

Dear Sir or Madam:

This letter constitutes an administrative appeal under the federal Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted on behalf of Human Rights Watch (“HRW”) to the Department of the Army (Army) regarding Human Rights Watch’s March 22, 2018, request seeking records relating to the alleged mistreatment or injury of detainees by military forces in Afghanistan, including those held in shared custody with Afghan authorities, from September 11, 2001, until present. We challenge the adequacy of the agency’s search for responsive records.

#### **History of Human Rights Watch’s Request**

On March 22, 2018, Human Rights Watch submitted a FOIA request to the U.S. Army Freedom of Information Office via e-mail. The request sought information related to the alleged mistreatment or injury of detainees held by US military forces in Afghanistan. Specifically, the request sought any records<sup>1</sup> produced or held by the U.S. Army related to the alleged mistreatment or injury of detainees held by US military forces in Afghanistan, including those held in shared custody with Afghan authorities, from September 11, 2001 until the date of this request, including the following:

- a. Any command-initiated investigations, including investigations conducted under Army Reg 15-6 or other authority;
- b. Any injury reports in which the injured person was a detainee;

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<sup>1</sup> The request noted that “[r]ecords include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, instant messages, text messages, or manuals.”



- c. Any reports of offense, including but not limited to DD Forms 458 and 1569;
- d. Any investigation conducted pursuant to Article 32, UCMJ;
- e. Any report of an investigation conducted by any Inspector General;
- f. Any record of non-judicial punishment, to include proceedings in which the charges were dismissed;
- g. Any charge sheets preferred under the UCMJ;
- h. All trial records of summary courts-martial, special courts-martial, and general courts-martial, to include any allied papers, appellate briefs, and decisions;
- i. Any and all General Officer Memoranda of Reprimand (GOMOR) issued, with any submissions by any recipients of the Memoranda, both before and after the Memorandum was issued;
- j. All documents relating to grade determinations based on misconduct or dereliction;
- k. Any action to remove a Military Occupational Specialty (MOS) or other special certification or designator;
- l. Any administrative reduction in rank;
- m. Any correspondence relating to the release or detachment for cause of any commander;
- n. Any administrative separation proceedings instituted, regardless of outcome;
- o. Any application submitted to a Board for Correction of Military or Naval Records relating to adverse action taken based on treatment of detainees, and any judicial review proceedings or administrative proceedings with respect to the decision of these boards;
- p. Any correspondence between the United States and any official of the Afghan government about the treatment of detainees;
- q. All documents relating to any investigations conducted in response to claims submitted by detainees or their families, and records of any ex gratia or other payments to detainees or their families;
- r. All the Department of Defense Office of Inspector General claims service records relating to the treatment of detainees;



- s. All claims submitted under the Military Claims Act, Foreign Claims Act, and Federal Tort Claims Act against the United States government;
- t. To the extent not produced in response to the above requests, all other administrative investigations, hearings, and documents resulting in either an adverse administrative action or a "no action" determination by military officials.

In its April 3, 2018, response to this request, the Department of the Army's FOIA Office advised that it "serves as the referral point and policy office for the Department of the Army Freedom of Information Act and Privacy Act entities." It further advised that our request had been forwarded to, among others, the Office of the Judge Advocate General ("JAG").

On May 2, 2018, we received separate written responses from JAG's International and Operational Law Division ("IOLD") and from JAG's U.S. Army Claims Service ("USARCS"). In its response, IOLD stated that it "found no records responsive to [the] March 22, 2018 FOIA request." The response provided no additional details about how the search was conducted or which records were searched. Additionally, the request's status was marked as "closed" on the case status page of the Army FOIA website, though the response letter never stated that the determination was final.

#### **Basis for Appeal: The Army has failed to conduct an adequate search for responsive records**

Pursuant to FOIA, the Army is obligated to conduct a search for all records responsive to the request. 5 U.S.C. § 552(a)(3); *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) ("[T]he agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested."). An agency "cannot limit its search to only one record system if there are others that are likely to turn up the information requested." *Oglesby*, 920 F.2d at 68. FOIA requires the Army to "search all locations 'likely' to contain" responsive records. *DiBacco v. U.S. Army*, 795 F.3d 178, 190 (D.C. Cir. 2015); *see also Ancient Coin Collectors Guild v. United States Dep't of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) ("An agency is required to perform more than a perfunctory search in response to a FOIA request.").

To conduct an adequate search, an agency must search all offices or departments within the agency where it should know responsive records might be found. In *Natural Res. Def. Council v. Dep't of Def.*, 388 F. Supp. 2d 1086 (C.D. Cal. 2005), the court held that the agency had improperly limited its search to the Office of the Secretary of Defense. The court found that, when "the requester clearly states that he wants all agency records on a subject, i.e., regardless of their location," an agency is obligated to follow any "lead that is both clear and certain" when searching for responsive records. *Nat'l Res. Def. Council v. U.S. Dep't of Def.*, 388 F. Supp. 2d 1086, 1102 (C.D. Cal. 2005) (citing *Kowalczyk v. Dep't of Justice*, 73 F.3d 386, 389 (D.C. Cir.



1996)). Here, if IOLD and USARCS found no responsive records, JAG ought to have had clear and certain leads as to where records of the relevant investigations might be located.

Moreover, publicly-available information, including statements from the US government, make clear that JAG could not have conducted an adequate search. As HRW noted in its FOIA request, the U.S. government has reported that the U.S. Department of Defense has conducted thousands of investigations into detainee abuse and disciplined hundreds of service members. According to a November 27, 2015, government report, “more than 70 investigations concerning allegations of detainee abuse in Afghanistan conducted by the Department [of Defense] resulted in trial by courts-martial, close to 200 investigations of detainee abuse resulted in either non-judicial punishment or adverse administrative action, and many more were investigated and resulted in action at a lower level.”<sup>2</sup> JAG’s failure to locate any records relevant to hundreds of disciplinary proceedings and dozens of courts-martial concerning abuse of detainees in Afghanistan makes clear that the agency has not conducted an adequate search. The agency either transferred HRW’s request to the wrong components, or IOLD and USCARCS failed to adequately search their records.

Furthermore, IOLD and USARCS’s responses fail to justify the search it did conduct. First, the Army has provided no explanation of why it has limited its search to JAG and the other subdivisions within the Army to which it referred our request. We therefore cannot know if responsive records may be in the possession of some other office or department within the Army. Second, JAG itself has provided no explanation for how and why it decided that it would only have IOLD and USARCS search for responsive documents. Third, IOLD has not provided any information about where and how it conducted its search for responsive records.

Pursuant to the requirements of FOIA, we request a response to this appeal within twenty (20) working days.

Very truly yours,

Charles Crain  
Media Freedom & Information Access Clinic  
Yale Law School  
P.O. Box 208215  
New Haven, CT 06520-8215  
(203) 436-5824  
charles.crain@ylsclinics.org  
*Counsel for Human Rights Watch*

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<sup>2</sup> See US State Department, “One-Year Follow-up Response of the United States of America to Recommendations of the Committee Against Torture on its Combined Third to Fifth Periodic Reports,” para. 31, November 27, 2015, <https://www.state.gov/j/drl/rls/250342.htm> (accessed July 27, 2018).

# **EXHIBIT D**



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
U.S ARMY HUMAN RESOURCES COMMAND  
1600 SPEARHEAD DIVISION AVENUE  
FORT KNOX, KY 40122

May 10, 2018

**Freedom of Information Act Office**

Ms. Laura Pitter  
Human Rights Watch  
350 Fifth Avenue 34<sup>th</sup> Floor  
New York NY 10118-3299

Ms. Pitter

This is in response to your Freedom of Information Act (FOIA) request for a copy of any records produced or held by the U.S. Army to the alleged mistreatment or injury of detainees held by US military forces in Afghanistan to including those held in shared custody with Afghan authorities, from September 11, 2001 until the date of this request. Your request was received in this office on April 10, 2018 and has been processed under the provisions of the Freedom of Information and Privacy Acts. We have assigned your request control numbers FP-18-015313 and FA-18-1651 for administrative and tracking purposes – please refer to these numbers when inquiring with us about your request.

Per the Human Resources Command JAG office, after conducting a search of the Total Army Personnel Database/Soldier Management System/Interactive Personnel Records Management System/National Personnel Records Center (eMilRecs), no responsive records were located. Please note, because a "No Records" determination may be considered adverse, you may appeal this determination using the procedures described below.

Per the Human Resources Command IG office requested documents for an IG investigation must be requested through:

U.S. Army Inspector General Agency (SAIG-ZXR)  
1700 Army Pentagon Room 1E132  
Washington DC 20310-1700

Please do not consider this a denial of your request, but our effort to provide you with policy in a timely and efficient manner. If you require a formal response, you may submit a letter in writing to this Command, ATTN: AHRC-FOI. Upon receipt, your request will be processed though our Initial Denial Authority.

-2-

For any further assistance and to discuss any aspect of your request, you have the right to contact the US Army, Human Resources Command, FOIA Public Liaison, Ms. Monique Wey-Gilbert at (502) 613-4057. Additionally, you have the right to contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6601; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at (202) 741-5770; toll free at 1-877-684-6448; or facsimile at (202) 741-5769.

If you have already requested a formal response and are still not satisfied with your response, you have the right to appeal to the Office of the General Counsel through the Department of the Army, US Army Human Resources Command, ATTN: AHRC-FOI, 1600 Spearhead Division Avenue, Department 107, Fort Knox, Kentucky 40122-5504. Your appeal must be postmarked or electronically transmitted within 90 days of the date of this response.

Please be advised there are no assessable Freedom of Information Act fees for processing your request. For additional information or assistance, please contact the Freedom of Information and Privacy Act Office at (502) 613-4074 or [usarmy.knox.hrc.mbx.foia@mail.mil](mailto:usarmy.knox.hrc.mbx.foia@mail.mil).

Sincerely,

A handwritten signature in black ink that reads "Angela Spidell". The signature is written in a cursive, flowing style.

Angela Spidell  
Government Information Specialist



# **EXHIBIT E**



MEDIA  
FREEDOM &  
INFORMATION  
ACCESS CLINIC

ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

Yale Law School

June 25, 2018

Department of Defense  
Office of Inspector General  
ATTN: FOIA Appellate Authority  
Suite 10B24  
4800 Mark Center Drive  
Alexandria, VA 22350-1500

**RE: FREEDOM OF INFORMATION ACT APPEAL**  
**FOIA REQUEST DODOIG-2018-000461**

To whom it may concern:

This letter constitutes an administrative appeal under the federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of Human Rights Watch to the United States Marine Corps ("Marines") regarding the denial of the request for expedited processing and a fee waiver for the above-referenced FOIA request.

On March 22, 2018, we submitted a FOIA request on behalf of Human Rights Watch to the Department of Defense Office of Inspector General via the FOIAOnline portal.

In that request, we requested expedited processing pursuant to 5 U.S.C. § 55(a)(6)(E) because of a compelling need to inform the public concerning federal government activity. This request is urgent in light of the broad public interest in the US military's treatment of detainees in Afghanistan and the recent request by the prosecutor for the International Criminal Court to open an investigation in Afghanistan. This investigation would include allegations of detainee abuse on the part of US military forces. If granted, part of the ICC investigation will include an assessment of whether the US government has thoroughly and sufficiently investigated alleged US military detainee abuse as it claims. Many victims of the alleged abuse carried out by US forces are reportedly unaware of the ICC investigation into this issue and have had difficulty reporting their abuses to the court. Human Rights Watch plans to conduct advocacy around this issue and assist victims in reporting the abuse when it is able. Knowing what abuses the US has investigated and whether the investigations have been adequately conducted will be essential to these efforts. Moreover, the information will lose value if not released in time for victims to learn of the ICC investigation and report abuse to the court. The information sought is also relevant to US public concern about whether there has been adequate accountability for US detainees abuse as well.

By letter dated March 26, 2018, we received a denial of the request for expedited processing on the basis that we had not demonstrated how the requested information "will lose value if not processed on an expedited basis."



MEDIA  
FREEDOM &  
INFORMATION  
ACCESS CLINIC

Page 2 of 2

This letter timely appeals the denial of the request for expedited processing for the requested records. We hereby request that the OIG reconsider its denial of our request for expedited processing. Please send any correspondence to the address indicated below.

Sincerely,

Hannah Bloch-Wehba  
Media Freedom & Information Access Clinic  
Yale Law School  
P.O. Box 208215  
New Haven, CT 06520-8215  
(203) 436-5824  
hannah.bloch-wehba@ylsclinics.org  
*Counsel for Human Rights Watch*